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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/813,364	03/31/2004		Gregory R. Thune	059691-0114	5021
22428	7590	03/13/2006		EXAMINER	
FOLEY AN	D LARI	ONER LLP	PRICE, C	CARL D	
SUITE 500 3000 K STREET NW				ART UNIT	PAPER NUMBER
WASHINGT	ON, DC	20007	3749		

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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U.S. Patent and Tr PTOL-326 (R		ction Summary Pa	rt of Paper No./Mail Date 03032006						
2) Notice 3) Inform Paper	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) r No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:							
	and and another policies of the design for a not	2. II.3 SOMMON SOPIOS HOLFOCONO	<b>.</b> .						
* s	application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.								
	3. Copies of the certified copies of the priority documents have been received in this National Stage								
	<ul> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> </ul>								
a)[	a) All b) Some * c) None of:								
_	Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 119(a)	-(d) or (f).						
Priority u	ınder 35 U.S.C. § 119	•							
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.									
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).								
10)	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
	The specification is objected to by the Examine		Tvaminar						
	on Papers								
8)L	Claim(s) are subject to restriction and/o	r election requirement.							
1	Claim(s) is/are objected to.	v alastian vasvilasas sat							
6)⊠	6)⊠ Claim(s) <u>1, 8, 9, 36-38</u> is/are rejected.								
1	Claim(s) is/are allowed.	wandidwii iioiii consideratioii.							
	<ul> <li>4)⊠ Claim(s) 1-22 and 36-38 is/are pending in the application.</li> <li>4a) Of the above claim(s) 2-7 and 10-22 is/are withdrawn from consideration.</li> </ul>								
· _	on of Claims	. P At							
	·								
3)[_]	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.								
/	,	action is non-final.	applified as to the receive !						
· —	Responsive to communication(s) filed on <u>01/0</u> .								
Status									
- Exter after - If the - If NO - Failu Any r	MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.1 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a repl period for reply is specified above, the maximum statutory period or to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	y within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).						
	ORTENED STATUTORY PERIOD FOR REPL	Y IS SET TO EXPIRE 3 MONTH(	S) FROM						
Period fo	The MAILING DATE of this communication app or Reply	pears on the cover sheet with the c	orrespondence address						
		CARL D. PRICE	3749						
	Office Action Summary	Examiner	Art Unit						
		10/813,364	THUNE ET AL.						
		Application No.	Applicant(s)						

### **DETAILED ACTION**

## Response to Arguments

Applicant's arguments with respect to claims 1, 8, 9 and 36-38 have been considered but are most in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on 01/03/2006 applicant has amended the claims to include the following:

"... a fitment that is removably attached to the burn control cover, <u>said fitment</u> configured to seal <u>said candle container</u>...".

In order to address the newly added limitation that "said fitment configured to seal said candle container", the newly cited prior art references of US001267475 (Stroble), US001365074 (Alverez et al.) and US001165326 (Dunn) is now relied on in the flowing rejection of the claims. Each of these prior art references teach providing fuel fired container air feeding top covers with a fitment that is removably attached thereto and wherein the fitment, or cover, is configured to seal the fuel candle container for a variety of reasons, such as, for "preventing evaporation of the volatile constituents of the hydrocarbon fuel" (US001267475 (Stroble)), protection of the device "during rain, sleet and the like" (US001365074 (Alverez et al.)) and "to keep out moisture and dirt" (US001165326 (Dunn)). See below.

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

## Claims 1, 8, 9, 36-38 are rejected under 35 U.S.C. 103(a)

Claims 1, 8, 9 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US006585510B2 (PAPAI) in view of US001267475 (Stroble).

US006585510B2 (PAPAI) shows and discloses a candle fuel fired container including:

- a holder (10) with a top rim;
- a burn control cover (40) with a chimney (32) on a top surface and with a central exhaust hole (35) formed therein;
- a rim (34) configured to removably attach to the top rim (not referenced) of the holder and a lower ring (36) extending vertically down from an interior of the burner control cover and which extends below (see figure 4) the top rim of the holder when the burner control cover is attached to the holder;
- the burner control cover includes peaks (28) and troughs (e.g. 23; figure 3) that define air intake vents in the rim; and
- wherein the burner control cover and holder are configured to vent air into the holder at a circumference of the rim of the holder.

US006585510B2 (PAPAI) discloses the invention substantially as set forth in the claims with possible exception to:

- a fitment that is removably attached to the burn control cover wherein the fitment is configured to seal the candle container.

Each of US001267475 (Stroble), US001365074 (Alverez et al.) and US001165326 (Dunn) teach, form from applicants' same as well as the same field of endeavor in US006585510B2 (PAPAI), providing a fuel fired container air feeding top covers with a fitment that is removably attach so that the fitment, or cover, is configured to seal the fuel container for a variety of reasons, such as, for "preventing evaporation of the volatile constituents of the hydrocarbon fuel" (US001267475 (Stroble); see element 8), protection of the device "during rain, sleet and the like" (US001365074 (Alverez et al.); see elements 8, 34) and "to keep out moisture and dirt" (US001165326 (Dunn); see elements 20, 21).

In regard to claims 1, 8, 9 and 36-38, for the purpose of, for example, protection of the device during rain, sleet and the like, it would have been obvious to a person having ordinary skill in the art to a fitment, or cover, that is removably attached to the burn control cover wherein the fitment or cover is configured to seal the candle container, in view of the teaching of any one of US001267475 (Stroble), US001365074 (Alverez et al.) and US001165326 (Dunn).

### Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

### THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

## **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CARL D. PRICE

**Primary Examiner** 

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